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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROLV BERG DRIVE AS,

Plaintiff,

- against -

NORTH OFFSHORE AS and TROMS
OFFSHORE AS,

Defendants.

07-Civ. 11502 (SHS)

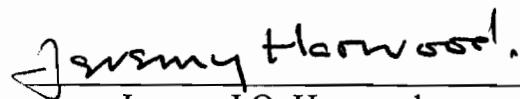
AFFIDAVIT OF
JEREMY J.O. HARWOOD

STATE OF NEW YORK)
 : ss:
COUNTY OF NEW YORK)

JEREMY J.O. HARWOOD, being duly sworn, deposes and says:

1. I am a member of the firm of Blank Rome, LLP attorneys for the Plaintiff herein.

2. I attach as Exhibit A hereto a true copy of the transcript of a hearing on November 5, 2007.


Jeremy J.O. Harwood

Sworn to before me this
24th day of March, 2008


Notary Public


NEAL MITCHELL
Notary Public, State of New York
No. 01M1614408
Qualified in New York County
Commission Expires Aug. 16, 2008 

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NORTH OFFSHORE A.S.,

Plaintiff

-vs-

ROLV BERG DRIVE A.S.,

DOCKET NO.: CV-07-3095 (SHS)
New York, New York
November 5, 2007

Defendant
-----X

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE

BEFORE THE HONORABLE SIDNEY H. STEIN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff: MICHAEL J. FREVOLA, ESQ.
Holland & Knight LLP
195 Broadway
New York, NY 10007

For the Defendant: JEREMY O. HARWOOD, ESQ.
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Audio Operator: No Audio Operator

Proceedings Recorded by Electronic Sound Recording
Transcript Produced by Transcription Service
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KRISTIN M RUSIN
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1 THE CLERK: North Offshore versus Rolv, zero seven
2 civil three zero nine five.

3 Counsel, please state your names for the Court.

4 MR. FREVOLA: Michael Frevola, Holland & Knight, for
5 the plaintiff, North Offshore. Good afternoon, Your Honor.

6 THE COURT: Good afternoon, sir.

7 MR. HARWOOD: Good afternoon, Your Honor. Jeremy
8 Harwood, Blank Rome, for the defendant, Rolv Berg.

9 THE COURT: All right. Good afternoon.

10 Please be seated, gentlemen. I've brought you in for
11 a determination on defendant's motion to seek counter security.
12 At our pretrial conference on October 3rd, we had a discussion
13 of that, and I sent the parties away to see if they could
14 resolve it themselves. Having heard nothing, I take it it's
15 unresolved as of now, and I will render the decision, which is
16 as follows.

17 Rolv Berg Drive, which I'll call RBD, seeks one point
18 one million dollars in counter security from plaintiff North
19 Offshore pursuant to Rule E(7) of the supplemental rules for
20 certain admiralty and maritime claims. I'm denying that motion
21 for the reasons set forth.

22 The facts are as follows. On February 16, 2004,
23 North Offshore entered into a three-year charter party with RBD
24 for the Aldoma, which is owned by non-party AMNGR, a Russian
25 company.

1 Disputes arose in connection with that charter party,
2 and North Offshore brought a variety of claims against RBD in
3 an arbitration that was held in Norway. The arbitration panel
4 subsequently made two separate awards to North Offshore in
5 September of 2006 and April of 2007, and the record reflects
6 that RBD has since paid those awards.

7 However, North Offshore also has additional claims
8 against RBD of approximately eight hundred thousand dollars,
9 also arising out of the February 2004 charter party. North
10 Offshore intends to have those claims adjudicated in Norwegian
11 arbitration proceedings.

12 Has that actually been started, sir?

13 MR. FREVOLA: Your Honor, I spoke to my client this
14 afternoon, and the arbitration that had been commenced and was
15 challenged as procedurally incorrect was stopped, and then the
16 second arbitration demand that had been made has been now
17 joined. The panel has been convened. And I understand that
18 the filings will happen probably some time in the next month in
19 terms of the offensive claim by North Offshore.

20 THE COURT: All right.

21 In connection with North Offshore's outstanding
22 claims against RBD, North Offshore initiated this action
23 seeking an order of attachment pursuant to Rule B of the
24 supplemental rules for certain admiralty and maritime claims.

25 In April of 2007, I authorized an attachment of up to

1 five hundred thirty-two thousand dollars of RBD's funds, and I
2 later amended that order of attachment in July to authorize an
3 attachment of up to nine hundred eighty-eight thousand dollars.

4 North Offshore, I'm informed in the papers, attached
5 approximately four hundred thousand dollars of RBD's funds in
6 September of this year.

7 RBD has also filed an answer and counterclaim
8 pursuant to Supplemental Rule E(7) in August of this year
9 asserting that North Offshore breached a March 5, 2004 side
10 agreement between the two parties pursuant to which RBD had the
11 option of extending the time charter for the Aldoma.

12 RBD sought Offshore's consent to the exercise of the
13 option in January 2007 but, according to the counterclaim,
14 North Offshore refused, and RBD now seeks approximately
15 thirteen million dollars in damages.

16 North Offshore responds that a condition precedent to
17 the exercise of the option was the consent of AMNGR, the owner
18 of the vessel, but that vessel owner refused to give its
19 consent for commercial reasons. As a result, North Offshore
20 asserts that extension of the time charter was not possible.
21 It couldn't do it, it says, and it therefore did not breach any
22 agreement with RBD.

23 Defendant, as I said, seeks one point one million
24 dollars in counter security pursuant to Rule E(7), the relevant
25 part of which states, quote:

1 "When a person who has given security for damages in
2 the original action asserts a counterclaim that
3 arises from the transaction or occurrence that is the
4 subject of the original action, a plaintiff for whose
5 benefit the security has been given must give
6 security for damages demanded in the counterclaim,
7 unless the court, for cause shown, directs
8 otherwise."

9 Here, RBD asserts that it is entitled to counter
10 security pursuant to Rule E(7) because RBD has had
11 approximately four hundred thousand dollars of its funds
12 attached as security for North Offshore's claims in the
13 original action.

14 The defendant states that its counterclaim arises
15 from the same transaction or occurrence that is the subject of
16 the original action and is therefore entitled to security by
17 right.

18 RBD also asserts that counter security should issue
19 because its counterclaim satisfies the minimal pleading
20 requirements for admiralty claims seeking security pursuant to
21 Rule B of the supplemental rules. However, it's not Rule B
22 that applies here. The rule in this circuit is that, quote:

23 "An attachment should issue --"

24 -- brackets --

25 "-- pursuant to Rule B --"

1 -- end brackets --

2 "-- if the plaintiff shows that, one, it has a valid
3 prima facie admiralty claim against the defendant;
4 two, the defendant cannot be found within the
5 district; three, the defendant's property may be
6 found within the district; and four, there's no
7 statutory or maritime law bar to the attachment."

8 End quote. Aqua Stoli Shipping Limited v. Gardner Smith Party
9 Limited, 460 F. 3d 434, comma, four four five, Second Circuit
10 (2006).

11 Under Rule B, courts need not engage in any broader
12 equitable inquiry or apply a needs test requiring the plaintiff
13 to show that even if the defendant cannot be found within the
14 district the attachment is necessary to obtain jurisdiction
15 over a defendant or to secure a potential judgment. That is a
16 quote from Aqua Stoli at four four six.

17 As I said, however, Rule B does not apply here.
18 Motions for counter security are brought pursuant to Rule E(7),
19 which, quote:

20 "-- makes clear that the trial court possesses broad
21 discretion in deciding whether to order counter
22 security."

23 End quote. Result Shipping Co v. Ferruzzi, F E R R U Z I
24 [sic], Trading USA Inc, 56 F. 3d 394, comma, three nine nine,
25 Second Circuit (1995).

1 Courts consider several factors in determining how to
2 exercise their discretion, but, quote:

3 "-- the core purpose of the counter security rule is
4 to place the parties on an even footing."

5 Semi colon.

6 "If one party is deprived of the use of its property
7 during the litigation but the adverse party is not,
8 despite the pendency of reciprocal claims, the party
9 with the security may have unfair leverage in the
10 action."

11 End quote. Finecom -- that's F I N E C O M -- Shipping Limited
12 v. Multi-Trade Enterprises A.G., 2005 AMC 2952, Southern
13 District (2005).

14 In addition, the trial court must be guided by the
15 essential and equitable purpose of the rule. In doing so, the
16 court must weigh the importance of the security interest giving
17 rise to the initial seizure and the burden of posting counter
18 security against the potential injustice of requiring the
19 defendant counter-claimant to post security without affording
20 reciprocal protection. That is a quote from Result Shipping at
21 four hundred.

22 Nothing in Aqua Stoli changes the principle that I
23 have just set forth which suggests that a motion for counter
24 security pursuant to Rule E(7) need only meet the basic
25 requirements of an admiralty claim brought pursuant to Rule B.

1 Even post-Aqua Stoli, motions for counter security are subject
2 to the broad discretion of the court. See Clipper Shipping
3 Lines Limited v. Global Transport Oceanico -- that's O C E A N
4 I C O -- S.A., 2007 Westlaw 646329 at star one, Southern
5 District New York, February 27, 2007.

6 Thus, whether to grant or deny the motion for counter
7 security is an equitable determination addressed to the court's
8 discretion. Let's take a look at those factors to determine
9 how discretion should be exercised.

10 To begin with, RBD has failed to demonstrate that its
11 counterclaim arises from the same, quote:

12 "-- transaction or occurrence that is the subject of
13 the original action."

14 End quote. North Offshore contends that the February 2004
15 charter party and the March 2004 side agreement constitute
16 entirely separate transactions, that the counterclaim cannot be
17 considered a mandatory counterclaim, and that RBD cannot,
18 therefore, rely on Rule E(7).

19 The limited evidence before this Court suggests that
20 RBD's counterclaim for the breach of a purported charter
21 extension and North Offshore's claim in the original action
22 which involved non-payment of hire for use of the Aldoma and
23 expenses associated with RBD's alleged failure to redeliver the
24 vessel within the agreed redelivery range raise entirely
25 separate issues of law and fact. This weighs against treating

1 RBD's counterclaim as a mandatory counterclaim entitled to
2 counter security. So that first factor cuts against granting
3 RBD's motion.

4 So there's a second factor, which is that RBD has
5 failed to submit any evidence to counter the proposition that
6 its counterclaim is entirely without merit. North Offshore, on
7 the other hand, has submitted affidavits from Svein -- that's S
8 V E I N -- Hoel, H O E L, managing director of North Offshore,
9 and Oleg Mnatsakanyan, M N A T S A K A N Y A N, the director
10 general of AMNGR.

11 Those affidavits support Offshore's position that it
12 could not extend RBD's charter because the condition precedent
13 to that extension -- namely, the consent of the vessel owner --
14 was not fulfilled based on a commercial decision by the vessel
15 owner. See Hoel affidavit, paragraphs five to nine, and the
16 affidavit of the director general of AMNGR at paragraphs six to
17 eleven.

18 RBD has not submitted any evidence to the Court to
19 contravene those accounts or to explain how, in light of those
20 facts, North Offshore could be deemed in breach of the March
21 2004 side agreement. A court, quote:

22 "-- should not require counter security where the
23 counterclaim is frivolous or so lacking in merit that
24 the court can only conclude that the counterclaim was
25 advanced solely to secure a negotiating advantage

1 over the complainant."

2 End quote. Titan Navigation Inc v. Timsco -- T I M S C O --
3 Inc, 808 F. 2d 400 at four oh four, Fifth Circuit (1987).

4 RBD's counterclaim is highly speculative -- it
5 relates to lost profits -- and is insufficiently supported.
6 Those deficiencies weigh against directing North Offshore to
7 post security. See Ythan -- that's Y T H A N -- Limited v.
8 Americas Bulk Transport Limited, 336 F. Supp. 305, comma, three
9 oh nine, Southern District (2004), and U.S. Maritime Services
10 Inc v. Trade Ventures Inc, 1998 U.S. District Lexis, 10608 at
11 star six, Eastern District Louisiana, July 8th, 1998.

12 Third, North Offshore has submitted affidavit
13 testimony and a financial statement showing that posting
14 counter security would be extremely burdensome and would compel
15 North Offshore, a small company with limited resources, to
16 release the RBD funds that it has already appropriately
17 attached to secure its own claims against RBD. See Hoel
18 affidavit, paragraphs fifteen to sixteen and twenty-four.

19 North Offshore asserts that a significant reason for
20 its lack of liquidity arises from the fact that it was required
21 to pay charter hire for AMNGR for which it has not yet been
22 paid by RBD in connection with the Aldoma.

23 All of these factors suggest that granting the motion
24 for counter security would not result in putting the parties on
25 an equal footing, which is what Rule E(7) seeks to promote.

1 Instead, it would serve on the state of this record to thwart
2 the purpose of North Offshore's Rule B attachment. Rule E(7),
3 quote:

4 "-- is not intended to impose burdensome costs on a
5 plaintiff that might prevent it from bringing a
6 suit."

7 End quote -- or, on that same logic, for maintaining an action.
8 Result Shipping, 56 F. 3d at 400.

9 Thus, the factors I've set forth above, including
10 North Offshore's financial circumstances and RBD's role in
11 North Offshore's difficult financial position, provide
12 additional good cause to deny the motion for counter security.

13 In conclusion, the governing rule here on counter
14 security is Rule E(7), not Rule B. Under E(7), such a motion
15 is addressed to the discretion of this Court, and three factors
16 specifically weigh against directing the granting of the
17 motion.

18 First, the counterclaim potentially arises from a
19 different transaction.

20 Second, the counterclaim, at least on the state of
21 the record so far, appears primarily aimed at thwarting North
22 Offshore's prosecution of the original action.

23 And third, North Offshore is not financially able to
24 post counter security without releasing the RBD assets that it
25 has already attached.

1 That is my decision, and a minute order will enter
2 that states for the reasons set forth on the record today the
3 motion by RBD for counter security is denied. All right.
4 Thank you, gentlemen.

5 Where do we go from here? I take it that arbitration
6 is going to go forward. Does it make sense to just bring you
7 in in a couple of months? I don't know where you want to go.

8 Mr. Harwood?

9 MR. HARWOOD: Yes, thank you, Your Honor. And I
10 appreciate the Court's time and its thorough opinion, even
11 though it was a decision against me. I just did want to add --

12 THE COURT: I think you've told me that before, sir,
13 in that case you had -- I think it had to do with mushrooms.
14 You were always very gracious when the ruling goes against you.
15 I assume when the ruling goes in your favor, you're equally
16 gracious.

17 MR. HARWOOD: I try to be, Your Honor. Yes. That
18 was an interesting case.

19 THE COURT: It was, indeed.

20 MR. HARWOOD: Your Honor, I just wanted to add that I
21 had spoken to Mr. Frevola before this to confirm that our
22 client -- my client had, indeed, instructed us to go forward
23 with our proposal at that hearing we had last month, withdrawal
24 of the counter security request, subject to reservation.

25 So I think we can see that if, in fact, as the

1 | plaintiff alleges, this is not the same transaction or
2 | occurrence, and -- than they had suggested -- and indeed, I
3 | wrote in my accepting that position RBD should be entitled to
4 | maintain its own and separate action for Rule B relief. But
5 | we'll see what comes about in that respect.

6 | I would suggest agreement to Your Honor's proposal
7 | for putting it on the calendar for next year, obviously, as the
8 | merits aren't for this Court.

9 | THE COURT: All right. But when do you want it on?
10 | How long an adjournment? Talk to each other. I'll put it on
11 | whenever you want.

12 | MR. HARWOOD: Some time -- February's fine by me,
13 | Your Honor.

14 | THE COURT: Pardon me?

15 | MR. FREVOLA: Do you want to say February?

16 | MR. HARWOOD: Yeah.

17 | MR. FREVOLA: That would make sense, Your Honor,
18 | because I don't believe that the actual arbitration itself, you
19 | know, best case, would be filed, let's say, until the beginning
20 | of December, and nothing's going to happen in December.

21 | THE COURT: But then what can we accomplish in
22 | February?

23 | MR. FREVOLA: Perhaps nothing.

24 | THE COURT: Right.

25 | MR. FREVOLA: That might be too early.

1 THE COURT: What about dismissing the claim without
2 prejudice to its renewal at the conclusion of the arbitration?

3 MR. FREVOLA: Would that be the counterclaim, Your
4 Honor, or the --

5 THE COURT: Well, it would be --

6 MR. FREVOLA: If we can ask for the funds, Your
7 Honor, I think that we could -- I could approach my client to
8 essentially say take the security, perhaps stop serving the
9 Rule Bs at this juncture, and put the money in an escrow
10 account, and we reconvene later.

11 The only issue with that, obviously, Your Honor, is
12 that we've only got about fifty percent of the security, and I
13 could see where they might say we've only got fifty percent of
14 the security. I cannot speak for them. I do know that their
15 circumstances are such that they are in a difficult position,
16 so they may think that pressing the remainder of their security
17 would be the best thing to do.

18 Perhaps we could get some type of undertaking from
19 Rolv Berg Drive in the form of a bank guarantee, or a letter of
20 undertaking, or something of that nature where we could stop
21 the Rule Bs and dismiss this case. Now, I think we'd be
22 willing to entertain that as well, Your Honor.

23 THE COURT: Well, why don't I just put it over to
24 February? And the parties should obviously talk to each other
25 to see if they can work something out.

1 MR. HARWOOD: Very good, Your Honor.

2 THE COURT: All right? And if you do settle up
3 before then, let me know.

4 MR. FREVOLA: I'm sorry, Your Honor, I was going to
5 say -- Your Honor probably is aware of this, but this is
6 conceivably a very important decision precedentially. Would
7 Your Honor mind if we got a transcript of this and published it
8 in the AMCs? Because it is a -- there are cases that are
9 fighting this issue in multiple places here, Your Honor, in the
10 Southern District right now.

11 THE COURT: You're talking about what rule governs
12 counter security?

13 MR. FREVOLA: I'm talking about whether the prima
14 facie Aqua Stoli case or --

15 THE COURT: Applies to counter security?

16 MR. FREVOLA: I'm fighting that very issue before
17 Judge Sullivan right now, Your Honor.

18 THE COURT: Well, for some reason, in admiralty cases
19 every decision I have people are telling me it's so important
20 in light of -- and then they arbitrarily choose either Winter
21 Storm or Aqua Stoli.

22 No, one of the advantages of being able to dictate a
23 decision into the record is it's not as -- it doesn't read as
24 well as something that's going to be published. If you want it
25 to be published, I'll clean it up and publish it as an opinion,

1 and then you'll be able to do whatever you want with it. But I
2 don't want you to take this transcript, all right? I'll try to
3 do that in the next couple of weeks.

4 MR. FREVOLA: Thank you, Your Honor.

5 THE COURT: Okay.

6 MR. HARWOOD: Your Honor, perhaps I could note that
7 at the hearing we had -- because the first time that the
8 argument came up that the counterclaim under the side letter
9 was -- arose under a separate side letter agreement -- when we
10 made our application for counter security, we weren't aware
11 that the plaintiff considered that our counterclaim was not a
12 Rule E counterclaim or a mandatory counterclaim.

13 So we didn't have the opportunity to withdraw our
14 request for counter security until after their position was
15 known, which is what we stated on the record at that hearing.

16 THE COURT: Wait, I don't understand. You could have
17 withdrawn your motion for counter security at any time up to
18 the -- when I started reading the decision, but you never
19 withdrew it, right?

20 MR. HARWOOD: We did at the hearing, Your Honor.

21 THE COURT: You did?

22 MR. HARWOOD: I stated that on the record at the
23 hearing, yes.

24 THE COURT: So then why did I go to the trouble of
25 deciding this?

1 MR. HARWOOD: Well, Your Honor, I apologize, but Your
2 Honor said at the hearing -- and I haven't got the transcript -
3 - that you had made some notes as to what would guide your
4 decision.

5 I don't think either of us came in here expecting you
6 to -- Your Honor to have taken the trouble to reach the
7 decision and to read it from the bench, because, in fact, we
8 had discussed what we were going to tell the Court as to what
9 our clients' respective positions were.

10 THE COURT: I see.

11 MR. HARWOOD: So that's --

12 THE COURT: Are you telling me that at the -- at the
13 October 3rd hearing you withdrew the motion?

14 MR. HARWOOD: That's right, Your Honor. I said that
15 my client had taken the commercial decision to withdraw the
16 motion to -- in order to go with its own Rule B, which -- with
17 its own inherent risk, given the fact that he's claimed not to
18 have any money. So that was the point.

19 Why would we bring a Rule B if, in fact, this
20 plaintiff -- when it's subject to his own Rule B action against
21 it? It doesn't have any money shuttling backwards and
22 forwards. And that was why I said on the record this was a
23 commercial risk that my client was prepared to take. And
24 indeed, it's what I said in the brief, which I know was filed
25 the afternoon before the -- or the morning of the hearing.

1 Accepting that position, RBD should be entitled to
2 maintain its own separate action, so --

3 THE COURT: No, I -- I -- I definitely remember that,
4 but I thought what that point was is that if you lose here, you
5 maintain the ability to bring a separate action. I remember
6 that discussion. And I thought that my either mental response
7 or actual response to that -- I don't know whether I
8 articulated it -- is well, if you feel that you can bring a
9 separate action under Rule B, you should go ahead and bring a
10 separate action under Rule B. But I -- that discussion I
11 remember.

12 MR. HARWOOD: I'm pretty certain I -- I withdrew it
13 on the basis of the representation I was going to make, or did
14 make, at the time that we will proceed with our own Rule B,
15 accepting Mr. Frevola's argument for his purposes that it was a
16 separate contract.

17 THE COURT: Well, is there a transcript of that?

18 MR. HARWOOD: I haven't got it, Your Honor, because
19 unfortunately I went away pretty shortly after that hearing for
20 about two and a half weeks, and my first week was -- so --

21 THE COURT: Yes.

22 MR. FREVOLA: Your Honor, I'm pretty sure there is a
23 transcript.

24 THE COURT: Yes, I'm sorry, my notes indicate October
25 3rd, pretrial conference on counter security held and taped, so

1 | there is a transcript of it.

2 | But, Mr. Harwood, what you say is really inconsistent
3 | -- well, it's not entirely inconsistent -- with the parties are
4 | going to try to resolve this, and that's why I began with well,
5 | I haven't heard from any of you.

6 | And that, indeed, is consistent with my thinking what
7 | you were saying is if you lose this motion, you will then
8 | consider filing a separate proceeding under Rule B.

9 | MR. HARWOOD: I think it gets us to the same result,
10 | Your Honor. I just wanted to make clear that that was what I
11 | had said at that October hearing. So if Your Honor is going to
12 | write the opinion -- and I don't have an objection to it, but
13 | is what we asked -- I think the October 3rd transcript probably
14 | is --

15 | THE COURT: Okay.

16 | MR. HARWOOD: -- will speak for itself.

17 | THE COURT: Somebody should get that October 3rd
18 | transcript and send it to my chambers.

19 | MR. HARWOOD: I will, Your Honor.

20 | THE COURT: And then I'll know whether or not to
21 | write on this.

22 | MR. HARWOOD: But I don't think Mr. Frevola would
23 | dispute that we both came here with the expectation we'd be
24 | telling -- advising the Court what our clients' positions were,
25 | as opposed to Your Honor having gone to the trouble of --

1 THE COURT: My just starting -- going forward and
2 writing.

3 MR. HARWOOD: Yeah. I apologize for the effort
4 you've --

5 THE COURT: No, no, no. No. I see. So what you're
6 saying is we thought I was going to formally withdraw it today,
7 and, Judge, you've -- especially if this gets published, you've
8 hurt my position in other -- in other actions.

9 MR. HARWOOD: I wouldn't say that, Your Honor. I
10 think we will -- the Court's ruling is correct that the Court
11 does have discretion always in a Rule E case. It's not -- I
12 don't think the Rule E -- speaking not in terms of this
13 particular client, but --

14 THE COURT: Yeah.

15 MR. HARWOOD: -- my view is in admiralty law would be
16 the Court always has discretion and it's not automatic.

17 MR. FREVOLA: And Your Honor, it's quite clear that -
18 - and I'll say this on the record -- that Your Honor's decision
19 here is based on an incomplete set of facts and does not have -
20 -

21 THE COURT: Well, that's why I said very -- I said
22 based on what I know so far.

23 MR. FREVOLA: There's no res judicata, collateral
24 estoppel effect, and we would not --

25 THE COURT: No, I understand, but you're -- no, I

1 understand that, but for the very reason that you asked me to
2 publish it is why you want it. It still gives you half a leg
3 up.

4 All right. Let me think about this and let's get the
5 transcript.

6 MR. HARWOOD: Yes, Your Honor, and that's exactly a
7 reason, I should add, that we didn't go to the expense of
8 putting in rebuttal affidavits, because that wasn't the route
9 we were going to go down. That's -- obviously, any Rule B
10 complaint alleging the allegations which are the foundation for
11 the counter security is going to have to be a prima facie case
12 which is properly supported and is going to address the
13 evidence against that.

14 So that's the reason that we didn't put any rebuttal
15 evidence in.

16 THE COURT: Okay.

17 MR. HARWOOD: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. FREVOLA: Thank you, Your Honor.

20 * * * * *

21 I, KRISTIN M. RUSIN, court approved transcriptionist, certify that the
22 foregoing is a correct transcript from the official electronic sound recording of the proceedings
23 in the above-entitled matter.

24 Transcript is certified original only if signed in green ink.

25

11/21/07

